

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SULEIMAN ABDULLAH SALIM, et al.,

Plaintiffs,

vs.

JAMES E. MITCHELL and JOHN  
JESSEN,

Defendants.

No. CV-15-0286-JLQ

ORDER RE: STIPULATIONS,  
CONSENT MOTION, MOTION  
TO SEAL, & PRETRIAL  
CONFERENCE

Several evidentiary related motions (ECF No. 208, 210, 229, 230, 231, and 234) are currently pending before the court and will be heard at the Pretrial Conference commencing on August 21, 2017. Additionally, the parties have filed two Stipulations (ECF No. 224 & 225). The Stipulations were submitted with "so ordered" language and a place for the court's signature. If the parties wish to stipulate to the admissibility of particular evidence at trial, they may simply file a stipulation, without seeking the court's signature. Alternatively, they may file a stipulated motion and proposed order. The court herein approves the two Stipulations (ECF No. 224 & 225).

The Government has filed an "Unopposed Motion for Procedures Governing Trial Testimony of Former Government Officials and Contractors" (ECF No. 229) seeking to have the court authorize an Executive Branch/Justice Department lawyer to attend and object to trial testimony which it might claim is inadmissible privileged or classified information. The Motion shall be heard at the Pretrial Conference. Counsel and Attorney Warden shall be prepared to respond to the court's concerns over the proposed interjection of objections by Justice or other Executive Department lawyers during the

1 conduct of the trial and in the presence of the jury. It is the court's responsibility to rule  
2 upon the admissibility of evidence and any objections thereto. Any witness and all  
3 counsel, including Executive Branch attorneys, are obligated to comply with the court's  
4 rulings on the admissibility of evidence. The court's concern is heightened by the  
5 reluctance of Mr. Warden, at the pretrial conference on May 5, 2017, to comply with the  
6 court's ruling and direction to furnish a challenged document to the court for its ruling on  
7 claims of confidentiality and privilege.

8 **IT IS HEREBY ORDERED:**

9 1. On or before August 16, 2017, counsel shall file their positions concerning the  
10 role and responsibility of Executive Branch lawyer(s) at trial and the procedures for  
11 handling objections concerning classified information outside the presence of the jury to  
12 be ordered by the court. *Inter alia*, counsel shall discuss the following options:

13 A. Prior to the testimony of any witness, or the offer of any documentary  
14 evidence counsel shall meet, confer, and identify all trial testimony and  
15 evidence, not previously ruled upon, that could result in a claim of privilege  
16 by an attorney for the Executive Branch. If agreement is not reached by  
17 counsel the matter shall be presented to the court for its ruling outside the  
18 presence of the jury.

19 B. Any failure to fully comply with the court's rulings and direction could  
20 result in the imposition of sanctions, including, but not limited to:

- 21 1. Contempt of court citation(s); and/or
  - 22 2. Instruction to the jury concerning adverse inferences to be drawn  
23 against a party from the failure of the witness to comply with the  
24 court's ruling(s); and/or
  - 25 3. Instructions to the jury concerning the role of the Executive Branch  
26 of the U. S. Government in this matter, including, but not limited to  
27 the indemnification of the Defendants by the Executive Branch.
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1 C. Counsel shall include any other suggestions they may have concerning  
2 procedures for affording the Executive Branch the opportunity to present  
3 objections outside the presence of the jury to trial evidence.

4 2. To the extent the parties seek court approval of two Stipulations (ECF No. 224  
5 & 225), they are GRANTED. The parties may conduct a deposition for use at trial of  
6 Plaintiff Ben Soud, which the parties state has been scheduled for Roseau, Dominica on  
7 August 11, 2017.

8 3. The Government's Motion (ECF No. 229) shall be heard at the Pretrial  
9 Conference commencing on August 21, 2017.

10 4. Defendants have filed a Motion to Seal (ECF No. 212) which seeks to file under  
11 seal information pertaining to Plaintiffs' medical condition, which the parties agreed was  
12 "confidential" during discovery. The Motion to Seal is **GRANTED**.

13 **IT IS SO ORDERED.** The Clerk is hereby directed to enter this Order and  
14 furnish copies to counsel.

15 **DATED** this 8th day of August, 2017.

16 s/ Justin L. Quackenbush  
17 JUSTIN L. QUACKENBUSH  
18 SENIOR UNITED STATES DISTRICT JUDGE  
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